

**Plaintiff
Jackie Fisher's**

**Response in Opposition
to Defendants'**

**Motion for
Summary
Judgment**

**EXHIBIT
41**



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Institutional Handbook of Operating Procedures

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UTMB HANDBOOK OF OPERATING PROCEDURES

| | | |
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| Section 3 | Human Resources Policies | 4/1/90 - Originated |
| Subject 3.10 | Discipline and Discharge | 9/15/95 - Reviewed w/ changes |
| Policy 3.10.2 | Appeal | - Reviewed w/o changes |
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Appeal Policy**Audience**

This policy applies to all employees, except as shown below, who are demoted, suspended without pay, or dismissed as a result of disciplinary action.

Exceptions

- ☐ University Police Officers, as defined in section 1.2.2. of the UT System Police Code of Conduct
- ☐ Faculty, teaching staff, or house staff who are subject to other approved discipline or dismissal procedures
- ☐ Employees who are suspended with pay pending an investigation of allegations
- ☐ Employees who are not reappointed to positions which are for a stated period of one year or less and which expire at the end of such period without the necessity of notice of nonrenewal as provided in the Board of Regents' Rules and Regulations
- ☐ Employees who are dismissed: who are appointed without fixed term and under applicable rule or regulation serve at the pleasure of the president of UTMB; who occupy positions that are dependent upon funding from a specific source and such funding is not received; as a result of reorganization; because of financial exigency; during the 180 day probationary period; who are appointed for a stated period that is less than 180 days (temporary); or who are appointed at a per diem or hourly rate and work on an as needed basis
- ☐ If a probationary, temporary or hourly employee alleges that a dismissal was based on unlawful discrimination, that complaint will be considered pursuant to Grievance Policy 3.10.3

Policy

Disciplinary actions resulting in demotion, suspension without pay, or dismissal may be appealed by the affected individual pursuant to the process set out below.

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Time Limits

The time limits set forth in the appeal procedure must be adhered to by both the individual and the appropriate supervisory and administrative personnel unless extended for good cause by the Director of the Office of Equal Opportunity and Diversity (OEO&D). Where time limits are indicated in this policy, "day one" will be the next working day.

Extensions

The failure of an individual to process the appeal in a timely manner to the next level shall constitute a withdrawal of the appeal. The failure of supervisory or administrative personnel to respond in a timely manner to an appeal shall constitute authorization for the individual to process the appeal to the next level.

A request for an extension of time for a response may be made by either the individual or the appropriate administrative official, by telephone to the OEO&D. The OEO&D shall make the decision regarding whether to grant an extension.

General

An individual wishing to initiate an appeal is expected to contact the OEO&D to describe and clarify the issues(s), to have the appeal policy and procedure explained and for assistance in preparing the appropriate form (AAO-2).

The Director of OEO&D shall be responsible for reviewing the issue(s) described in an employee's statement of the dispute to determine if the issue(s) meets the standards of eligibility, i.e., demotion, suspension or dismissal, for presentation as a written appeal to the first level of management. If, based on a review of the issue(s) described in the written statement, the Director determines that the dispute, in whole or in part, does not qualify for presentation to the first level of management, the Director will notify the individual, in writing, of the reason(s) for disqualification.

It is not required to have four levels in the appeal process when the organizational reporting structure does not provide four management levels to consider the appeal.

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Procedure
First Level

The individual must present a written appeal to the appropriate official (see attached matrix) within five working days from the date of the disciplinary action. The appeal shall contain a clear and concise statement of why the disciplinary action is unacceptable. The departmental personnel file may be reviewed by the first level official. Within ten working days of the receipt of the appeal, a written decision (form HR-61) from the appropriate official shall be mailed to the individual, with a copy to the individual's department head and a copy to the OEO&D. The appeal form and attachments are retained at the first level, pending a possible response from the individual.

Second Level

If the individual is not satisfied with the decision of the level one official, a written response stating why the decision is unacceptable must be submitted to the level one official by the individual within five working days of receipt of the level one decision. This written response requests that the appeal and attachments be forwarded within two working days to the next appropriate official according to the attached matrix. The second level official may review the departmental personnel file. A written decision on the appeal shall be mailed to the individual, by the level two official within ten working days of receipt of the appeal. A copy of the written decision is sent to the level one official and to the OEO&D. The appeal form and attachments are retained at the second level, pending a possible response from the individual.

Third Level

If the individual is not satisfied with the decision of the level two official, a written response stating why the decision is unacceptable must be submitted to the level two official by the individual within five working days of receipt of the level two decision. This written response requests that the appeal and attachments be forwarded within two working days to the level three official, the Executive Vice President.

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**Third Level,
continued**

The Executive Vice President may review the departmental personnel file. The Executive Vice President shall either hear the appeal in person or appoint a delegate(s) to hear the appeal. The hearing shall be conducted pursuant to the procedure set out in the following paragraphs.

Pre-hearing Rules and Procedures**Naming the
Delegates**

If the Executive Vice President elects to appoint a delegate(s) to hear the appeal, the name(s) will be furnished to the individual after the selection is made. If more than one person is appointed, one of such persons shall be designated to serve as chair and the individual will be so notified.

**Challenges to
Impartiality**

An individual may challenge the fairness and impartiality of the Executive Vice President, administrative equivalent or an appointed delegate(s). The challenge must be in writing and must clearly state the factual basis for the challenge. A challenge of the Executive Vice President or administrative equivalent must be made within five working days of the date of the request for a hearing and a challenge of a delegate(s) must be made within five working days after the date of the notice appointing the delegate(s). It shall be up to the person challenged to determine whether he or she can serve with fairness and impartiality. If the challenged Executive Vice President or administrative equivalent determines that he or she cannot be fair and impartial in the consideration of the appeal, he or she shall appoint a delegate(s) to hear the appeal. If a challenged delegate(s) determines that he or she cannot be fair and impartial in the consideration of the appeal, the Executive Vice President or administrative equivalent shall appoint another delegate(s).

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Time Limits

The hearing shall be conducted as soon as practical, but no later than twenty working days following the date of receipt of the appeal to the third level or the appointment of delegate(s).

Discovery Rights and Document Exchange

The individual may request UTMB documents, records, or exhibits. Such request must accompany the step three written appeal. The requested records will be furnished if they are relevant to the appeal and are not made confidential by law. This decision will be made by the Executive Vice President, administrative equivalent or the designated chairperson.

At least five days prior to the time set for the hearing, the UTMB representative for the appeal and the individual shall furnish each other with the names of the witnesses to be called, a summary of their expected testimony, and a copy of each document, record, or exhibit to be introduced at the hearing.

Hearing Rules and Procedures**Role of the Hearing Chairperson**

The Executive Vice President, administrative equivalent or the designated delegate shall preside as chairperson at the hearing. The chairperson will ensure the order of presentation as well as decide on questions or relevancy. The chair shall also have the discretion to determine the form and scope of cross examination allowed during the hearing.

Right to Representation

Upon request, the chairperson may consult and be advised by counsel during the hearing.

The individual has the right to be represented at the hearing by an attorney or other individual representative. If an attorney is to represent the individual at the hearing, UTMB must be notified at least five working days prior to the time set for the hearing. If the individual is represented by an attorney or an individual from an employee organization that does not claim the right to strike, UTMB must be

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represented by tan attorney.

Hearing Record

In an appeal hearing where the individual is represented by an attorney or an individual from an employee organization, a court reporter shall be furnished by UTMB to transcribe the hearing and swear in witnesses. The party requesting a copy of the transcript of the proceedings shall be responsible for its cost. In all other appeal hearing, UTMB shall tape the hearing and make a copy of the tape available to the individual on request. The transcript of the court reporter or the tape of the proceedings shall be the official record of the hearing.

Burden of Proof

UTMB has the burden of proving by a preponderance of credible evidence that good cause exists for the disciplinary action and therefore shall have the right to open and close the proceedings.

**Order of
Presentation and
Right to Cross-
Examination
UTMB
Employees as
Witnesses**

The hearing shall consist of opening statements on behalf of UTMB and the individual and testimony by witnesses called by UTMB and the individual, with both parties having the right to cross-examine witnesses and make closing statements.

Any employee can be asked to appear as a witness for either party.

It shall be the duty of an employee requested to testify to do so as to any facts which may be relevant to the appeal. No employee will be penalized, disciplined, or prejudiced for exercising the right to make a complaint, or for aiding another employee in the presentation of the complaint.

**Post Hearing
Rules and
Procedures**

The delegate(s) shall deliberate, prepare and forward written findings and recommendations to the Executive Vice President or administrative equivalent within ten working days after the close of the hearing.

The Executive Vice President or administrative equivalent shall mail his or her decision to the individual within ten working days following the receipt of the findings and recommendations from the delegate(s)

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and provide a copy of the decision to the OEO&D and to the level one and level two officials.

**Post Hearing
Rules and
Procedures, cont
Fourth Level**

The appeal form and attachments are retained at the Executive Vice President or administrative equivalent level, pending a possible response from the individual

If the individual is not satisfied with the level three decision, a written response stating why the decision is unacceptable must be submitted by the individual, to the Executive Vice President or administrative equivalent within five working days of the date of receipt of the level three decision. This written response requests that the appeal and attachments be forwarded within two working days to the level four official, the President of UTMB.

The review by the President shall be based solely upon the third level record and shall not include any new issue(s) or evidence. The departmental personnel file may be reviewed. Within a reasonable period of time, not to exceed thirty days following the date of receipt of the appeal to level four for review, a written decision shall be mailed to the individual, with a copy to OEO&D and to the Level one, two and three officials.

The decision of the President is the final decision that is available in the appeal procedure.

**Discrimination
Issues**

When an appeal contains an allegation of unlawful discrimination, the individual is expected to contact OEO&D. The OEO&D staff will assist the individual by clarifying the allegation of unlawful discrimination. If the individual elects to proceed with a formal appeal, the appeal policy is explained and assistance is provided in preparing the appropriate form (AA)-2) and a written statement describing the alleged unlawful discrimination.

The individual shall present the appeal to the appropriate first level of

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management (see attached matrix), in writing, within 10 calendar days from the date of the alleged discrimination. OEO&D shall investigate the allegations(s) of discrimination and advise the appropriate level of

**Discrimination
Issues, continued**

management of the findings of the investigation within ten working days. The first level management will consider the findings, make a decision and respond to the individual, in writing, within ten working days of receipt of the findings of OEO&D. The decision shall be mailed to the individual with a copy to OEO&D and a copy to the individual's department head.

Filing of Records

If resolution is not accomplished, the complaint shall be processed by following the procedures described in the section entitled, Procedure: Second Level.

After the final level decision or if the individual drops the appeal at any level, the written appeal and all decisions or responses regarding the complaint shall be forwarded to Employee Relations Division of Human Resources. The individual's departmental personnel file, if it has been requested for review, should be returned to the individual's department.

Matrix for Appeals Process

NOTICE: Prior to any demotion, suspension without pay, or dismissal actions, direct supervisors must obtain approval through the institute or center director or department head or academic service director.

REFERENCE DIRECTORY:

- A. Academic departments or any area reporting to a School Dean
- B. Academic service areas reporting to an Assistant or Associate Vice President or an Assistant or Associate Dean
- C. Business Affairs departments reporting to an Assistant Vice President
- D. Business Affairs departments reporting to the Vice President for Business Affairs or the Comptroller
- E. General Administration departments reporting to the Executive Vice President

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- F. Clinical Affairs departments reporting to the Vice President for Clinical Affairs
- G. Clinical Affairs departments reporting to the Hospital Administrator

A. TO BE UTILIZED BY ACADEMIC DEPARTMENTS, INSTITUTES, CENTERS OR ANY AREA REPORTING DIRECTLY TO A SCHOOL DEAN

LEVEL I

- ☐ The employee may present a written appeal to the appropriate School Dean within 5 working days from the date of the disciplinary action
- ☐ Note that in the case of the School of Medicine, the written appeal is submitted to the Vice Dean
- ☐ The Dean has 10 working days in which to mail a written decision
- ☐ If not satisfied, the employee has 5 working days from receipt of the decision to appeal to the Level II official

Level II

- ☐ The Vice President for Academic Affairs
- ☐ The Vice President for Academic Affairs shall mail a written decision to the employee within 10 working days of receipt of the appeal
- ☐ If not satisfied, the employee may present a written request within 5 working days for a hearing before the Level III official

Level III

- ☐ The Executive Vice President or his/her delegate
- ☐ Depending on the type of hearing utilized, the Executive Vice President or Administrative equivalent shall mail a written decision to the employee within 30 working days following receipt of the findings
- ☐ If not satisfied, the employee may make a written appeal to the Level IV official within 5 working days of the date of receipt of the Level III decision

Level IV

- ☐ The President of UTMB
 - ☐ The President of UTMB reviews the appeal. The review shall be based solely upon
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the Level III record and shall not include any new issue or evidence

- ☐ Within a reasonable period of time not to exceed 30 days, a written decision shall be mailed to the employee
- ☐ **THIS DECISION IS FINAL**

B. TO BE UTILIZED BY ACADEMIC SERVICE AREAS REPORTING TO AN ASSISTANT OR ASSOCIATE VICE PRESIDENT OR AN ASSISTANT OR ASSOCIATE DEAN

LEVEL I

- ☐ The employee may present a written appeal to the appropriate Assistant or Associate Vice President or Assistant or Associate Dean within 5 working days from the date of the disciplinary action
- ☐ The appropriate Assistant or Associate Vice President or Assistant or Associate Dean has 10 working days in which to mail a written decision
- ☐ If not satisfied, the employee has 5 working days from receipt of the decision to appeal to the Level II official

LEVEL II

- ☐ The Vice President for Academic Affairs
- ☐ The Vice President for Academic Affairs shall mail a written decision to the employee within 10 working days of receipt of the appeal
- ☐ If not satisfied, the employee may present a written request within 5 working days for a hearing before the Level III official

LEVEL III

- ☐ The Executive Vice President or his/her delegate.
- ☐ Depending on the type of hearing utilized the Executive Vice President or Administrative equivalent shall mail a written decision to the employee within 30 working days following receipt of the findings
- ☐ If not satisfied, the employee may make a written appeal to the Level IV official within 5 working days of the date of receipt of the Level III decision

LEVEL IV

- ☐ The President of UTMB
 - ☐ The President of UTMB reviews the appeal. The review shall be based solely upon
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the Level III record and shall not include any new issue or evidence

- ☐ Within a reasonable period of time not to exceed 30 days, a written decision shall be mailed to the employee
- ☐ **THIS DECISION IS FINAL**

| C. BUSINESS AFFAIRS DIVISION: Divisions which report to an Assistant Vice President. | | | |
|--|-------------------------------------|--------------------------|-------------------|
| LEVEL I | LEVEL II | LEVEL III | LEVEL IV |
| Assistant Vice President | Vice President for Business Affairs | Executive Vice President | President of UTMB |

| D. BUSINESS AFFAIRS DIVISION: Departments which report to the Vice President for Business Affairs or the Comptroller | | | |
|--|----------|--------------------------|-------------------|
| LEVEL I | LEVEL II | LEVEL III | LEVEL IV |
| Vice President for Business Affairs or Comptroller | N/A | Executive Vice President | President of UTMB |

| E. GENERAL ADMINISTRATION: Departments which report to the Executive Vice President | | | |
|---|----------|-----------|----------|
| LEVEL I | LEVEL II | LEVEL III | LEVEL IV |
| N/A | N/A | N/A | N/A |

| F. CLINICAL AFFAIRS DIVISION: Departments which report to the Vice President for Clinical Affairs | | | |
|---|-------------------------------------|--------------------------|-------------------|
| LEVEL I | LEVEL II | LEVEL III | LEVEL IV |
| Appropriate Executive Director | Vice President for Clinical Affairs | Executive Vice President | President of UTMB |

| G. CLINICAL AFFAIRS DIVISION: Departments which report to the Hospital Administrator | | | |
|--|------------------------|--------------------------|-------------------|
| LEVEL I | LEVEL II | LEVEL III | LEVEL IV |
| Appropriate Executive Director or Appropriate Official | Hospital Administrator | Executive Vice President | President of UTMB |

